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# Supreme Court of the United States

OCTOBER TERM, 1957

## No. 250

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the estate of HORACE P. GUIDRY,
Petitioner,

versus

THE TEXAS COMPANY,
Respondent,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

## RESPONDENT'S BRIEF IN OPPOSITION

July 12, 1957

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## INDEX


| | Page |
|---|---|
| Reference to Opinion Below | 1 |
| Statement as to Jurisdiction | 2 |
| Statutes Involved | 2 |
| Question Presented for Review | 4 |
| Statement of the Case | 4 |
| 1. Summary and Procedural History of the Case | 4 |
| 2. The Facts | 7 |
| Summary of the Argument | 15 |
| Argument | 16 |
| 1. There is no Conflict in Decision or Principle | 28 |
| 2. No Important Question of Federal Law is Involved | 29 |
| 3. The Decision Below is Clearly Correct | 29 |
| Conclusion | 28 |
| The Petition for Writ of Certiorari should be Denied | 28 |

## CASES CITED


| | Page |
|---|---|
| Gahagan Construction Corp. v. Armao, 1948, First Circuit, 165 F. 2d 301 | 17 |
| O'Donnell v. Great Lakes Dredge & Dock Co., 1943, 318 U. S. 36, 42-43, 63 S. Ct. 488, 492 | 24 |
| Senko v. LaCrosse Dredging Corporation, 1957, 77 S. Ct. 415 | 15 |
| South Chicago Coal & Dock Co. v. Bassett, 1940, 309 U. S. 251, 60 S. Ct. 544, 84 L. Ed. 723 | 15 |
| Summerlin v. Massman Construction Co., 1952, Fourth Circuit, 199 F. 2d 715 | 17 |
| The Texas Company v. Martin, 222 F. 2d 382, 350 U. S. 879, 76 S. Ct. 141; rehearing denied, January 30, 1956, 76 S. Ct. 346 | 15 |
| Wilkes v. Mississippi River Sand & Gravel Co., 1953, Sixth Circuit, 202 F. 2d 383, certiorari denied 1953, 346 U. S. 817, 74 S. Ct. 29, 98 L. Ed. 344 | 17 |
| Zientek v. Reading Co., 1955, Third Circuit, 220 F. 2d 183, Certiorari denied, October 10, 1955. Motion for leave to file petition for rehearing, denied January 30, 1956, 76 S. Ct. 345 | 22 |


## STATUTES CITED


| | |
|---|---|
| Jones Act, 46 U.S.C.A. §688 | 2 |
| Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §902, et seq. | 2 |

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### REFERENCE TO OPINION BELOW

The unanimous opinion of the Court of Appeals directing the dismissal of plaintiff's action appears at 240 F. 2d 674, and the opinion of said Court denying a rehearing on April 9, 1957 appears at 242 F. 2d 667. These opinions are set out in the Appendix of this brief on Pages 41 and 44, respectively.

## JURISDICTION

The jurisdiction of this Court is invoked by Petitioner under c. 646, Act of June 25, 1948, 62 Stat. 928, 28 U.S.C. §1254 (1).

## STATUTES INVOLVED

There are only two statutes directly involved in this case, namely, the Jones Act and the Longshoremen's and Harbor Workers' Compensation Act, the pertinent provisions of which are as follows:

Jones Act, Title 46 U.S.C.A.:

§688. Recovery for Injury to or Death of Seaman.

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; * * * Mar. 4, 1915, c. 153 §20, 38 Stat. 1185; Jun. 5, 1920, c. 250 §33, 41 Stat. 1007.

Longshoremen's and Harbor Workers' Compensation Act, Title 33 U.S.C.A.:

§902. DEFINITIONS. When used in this chapter-

* * * *

(3) The term "employee" does not include a master or member of a crew of any vessel * * * .

(4) The term "employer" means an employer any of whose employees are employed in maritime employment in whole or in part upon navigable waters of the United States * * * .

§903. COVERAGE.

(a) Compensation shall be payable under this chapter in respect of disability or death of any employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States * * * . No compensation shall be payable in respect of the disability or death of —

(1) A master or member of a crew of any vessel * * * .

§904. LIABILITY FOR COMPENSATION.

(a) Every employer shall be liable for and shall secure the payment of his employees of the compensation payable under Sections 907, 908, and 909 of this chapter. * * *

§905. EXCLUSIVENESS OF LIABILITY.

The liability of an employer prescribed in §904 of this chapter shall be exclusive and in place of all other liability of such employer

to the employee * * * (March 4, 1927, c. 509, §2 et seq., 44 Stat. 1425 et seq.

## QUESTION PRESENTED FOR REVIEW

In a suit under the Jones Act where the undisputed evidence was that Guidry, a roustabout, for The Texas Company, was killed while testing a gas pipe line on a *permanent platform*, did the Court of Appeals err in deciding that plaintiff had produced no evidence from which a jury could reasonably find that Guidry was a member of the crew of a vessel or that he was in the service of any vessel at the time of the instant accident?

## STATEMENT OF CASE

1.

### SUMMARY AND PROCEDURAL HISTORY OF THE CASE

Mrs. Savoie, Administratrix of the Estate of Horace P. Guidry, brought suit against The Texas Company, decedent's employer, for recovery under the Jones Act for the death of Guidry which occurred, according to her allegations, while decedent was acting as a member of the crew of the "Mary Virginia," a vessel operated by The Texas Company on Lake Salvadore.

Plaintiff alleged that on February 4, 1953, Horace P. Guidry was in the process of opening a valve at Well No. 20 in Lake Salvadore, and, as he put a wrench on said valve, it exploded in his face, blew him off the well plat-

form into the water and caused his death. She alleged among other things that The Texas Company negligently failed to furnish decedent a safe place to work, and that said valve was defective, which fact should have been known to the defendant.

As an alternative, plaintiff sought recovery under the Longshoremen's and Harbor Workers' Compensation Act and under the Louisiana State Workmen's Compensation Statute. These alternatives were reserved to her by agreement of counsel, and are not before this Honorable Court at this time.

The Texas Company defended the suit under the Jones Act on the grounds, first, that decedent was never a seaman or a member of the crew of a vessel while employed by The Texas Company; that he performed no duties of a seaman or member of the crew of a vessel for The Texas Company in the furtherance of navigation and commerce; that decedent's employment was not maritime in nature, and that the accident at issue did not happen aboard a vessel but on a fixed platform at a time when decedent was performing roustabout duties which had no connection whatever with the navigation of any vessel.

The Texas Company also defended the suit on the negligence issue.

The case was tried below before a jury. Motions for a directed verdict filed by defendant at the end of plaintiff's case and at the end of all of the evidence were denied.

The Jury found for the plaintiff in the amount of $80,000.

The defendant moved for judgment notwithstanding the verdict, for a new trial, and, in the alternative, for a remittitur.

Motions for judgment n.o.v. and for a new trial were denied. The Court required plaintiff to remit $40,000 or to stand a new trial.

In response to the said order, plaintiff entered a remittitur on March 21, 1956 (R. 231).

The Texas Company appealed to the Court of Appeals for the Fifth Circuit.

The Court of Appeals, after considering the record, briefs and arguments, unanimously awarded defendant judgment, dated February 5, 1957, reversing the Lower Court and remanding the case for further proceedings not inconsistent with its opinion.

Plaintiff petitioned for a rehearing, which was denied on April 9, 1957, by unanimous opinion of said Court.

Plaintiff then petitioned this Honorable Court for a Writ of Certiorari.

This brief in opposition is filed respectfully to demonstrate why the petition for a Writ of Certiorari should be denied.

2.

## THE FACTS

It is undisputed that Guidry, the decedent, was killed as a result of an accident which occurred on a fixed platform in Lake Salvadore while testing a gas pipe line which was to be used to furnish gas for certain re-working operations of an oil well at the location. This permanent platform was built on piling driven into the bed of the lake.

Decedent's employer, The Texas Company, an integrated oil producing corporation which carries on producing operations in Louisiana as well as in many other States and foreign countries.

The company has oil and gas production in the said Lake Salvadore, a shallow lake in South Louisiana.

After wells are completed, permanent platforms, such as the instant platform, are constructed, and a "Christmas tree," which regulates the flow of the wells, and other equipment used in the operations are housed on the platforms. This equipment is the same equipment used in Oklahoma and other inland oil and gas producing States for the same purpose as is used at the Lake Salvadore field. There is nothing unique or maritime about the equipment.

If this accident had happened in Oklahoma, it would have no maritime significance whatever, and the Jones Act would have no application.

In this case the record reveals that The Texas Company had to supply automobile and water-taxi transportation for its roustabouts in order to transport them from one well location to another, and to and from the lease base. It was shown that the company had approximately thirty well platforms in Lake Salvadore.

Mr. Guidry, the decedent, was employed by The Texas Company as a roustabout. He was the head roustabout in the Lake Salvadore operation. He was employed to maintain the equipment on the platforms, and his job consisted of checking chokes, regulating the pressure on the wells, changing chokes, scraping paraffin which accumulates in the well holes, painting the equipment, and doing miscellaneous maintenance work. Exhibit "Defendant B" is the log of his activities kept by *decedent* and his supervisor. It contains a day-by-day resume of the work performed by decedent and *is signed by him.* The Court's attention is invited to the analysis of these work sheets set out in the Appendix herein at page 32 et seq.

Guidry was The Texas Company representative in the inspection and maintenance of the equipment described hereinabove.

In order to transport Guidry and other employees of The Texas Company in this particular area from one location to another, The Texas Company chartered a forty-four foot lugger, the Mary Virginia, from John Kennedy of New Orleans.

Under the terms of the charter, Kennedy agreed to furnish the crew of the vessel (Exhibit Defendant 1). The

Texas Company agreed to pay him $30.00 per day when a crew of two men was aboard, and $23.00 per day when he had one man aboard. The purpose of the charter was "to perform transportation services."

Kennedy, an independent contractor, at the request of decedent, Guidry, hired decedent's brother, Henry Guidry, an experienced lugger pilot and operator, to handle the boat, and a man by the name of Matherne to act as relief for Henry Guidry.

There was generally one man aboard the boat, either Guidry or Matherne, except on two days at intervals, when both of these men were aboard.

On the day of the accident, Horace Guidry, the decedent, boarded the Mary Virginia in the morning with Paul Badeaux, helper, at The Texas Company landing. Horace told Henry, the boat operator, where he wanted to go. The boat then took off on its approximately one hour's run to Lake Salvadore oil field. During this travel time decedent and Badeaux were paid portal-to-portal pay at the minimum rate, in compliance with governmental regulations; the decedent's workday, at his regular rate of pay, commenced when he reached the Lake Salvadore field.

The day was uneventful until about two o'clock p.m. Up until that time, decedent and Badeaux had scraped paraffin from certain wells on the permanent platforms mentioned hereinabove.

About that time, Horace told Henry to go to Well No. 20, which he did. Badeaux tied up the Mary Virginia as decedent stepped on the permanent platform.

As mentioned hereinabove, the permanent platform contained the usual "Christmas tree" and the end of a gas pipe line which ran from the company's lease tank battery, along the bottom of Lake Salvadore, to this platform. The pipe line, which consisted of two-inch pipe, rose from the bottom of the lake, through the platform, to a point about one foot above it. Then an "L" was attached to the riser, which had the effect of bending the pipe line on a ninety-degree angle from the vertical riser to a horizontal extension. On this horizontal extension was a valve, and beyond the valve, in the same horizontal plane, was an additional short length of pipe which vented the pipe line to the open air.

This pipe line is not generally used. It is placed in use only to supply fuel in the event that certain re-working of the well is in progress.

While Guidry was on the platform, Mr. Lottinger, his superior, who reached the platform site about the time of Guidry's arrival, requested that he test the valve in order to determine if there was any pressure in the line.

Guidry took his wrench from a tool box, applied it to the valve, and, at this point an explosion or blowout occurred, the pipe line parted at the "L," and either the pressure or a blow from the pipe line knocked Guidry overboard and killed him or caused him to drown.

Henry Guidry, decedent's brother, testified that he had been operating boats in South Louisiana for many years. This Honorable Court, undoubtedly, will take judicial notice of the fact that experienced boatmen have been handling luggers in the bayou country of Louisiana unassisted, as a matter of second nature. Their luggers are their means of transportation, just as an automobile is to most of us who live in the city. Guidry (the boat operator, not the decedent) needed no help to navigate the lugger from one location to another.

Guidry (the boat operator) testified, further, that he piloted and steered the boat from one place to another (R. 48), and that he operated the engine.

Plaintiff attempted to show that he received orders from his deceased brother. Actually, a reasonable and proper reading of the record will show that the only so-called order that he received from his brother was a request to take him to a certain well, after which request the boat operator would navigate the boat to that location.

Under cross-examination, he was asked:

"Q. What type of work did your brother do for The Texas Company?"
"A. *He worked on the wells.*" (R. 54).
"Q. (Through interpreter) And his brother, Horace, did not work on the boat?"
"A. *Horace, he worked on the wells.* He would start the engines for the well." (R. 58):

"Q. *Now, when he says 'the engines for the wells', just so there will be no mistake, that has nothing to do with the boat angle?"*
"A. *No, not that. Not Horace, no. That work on the well, that.*" (R. 58).

The boat operator was asked:

"Q. Tell us whether or not you have ever seen your brother, Horace, tie up the boat."
"A. Sometimes, every once in a while." (R. 50).

The witness testified that when they arrived at Well No. 20, Paul Badeaux tied up the boat. He stated, further, that Badeaux, who was assisting the decedent for the first time on the day of the accident, and the decedent had no duties aboard the boat.

"Q. What would Horace Guidry, James Hatty (the man that Badeaux replaced on the instant day) and Badeaux do while the boat was going from one well location to another?"
"A. I don't know. I didn't see that. I was below sometimes."
"Q. Where would they be while he was operating the boat from one location to the other?"
"A. They were on the deck waiting to go to the well."
"Q. And they did nothing else other than to wait to get to the well?"
"A. Yes, they would wait. When we would arrive, they would work on the well." (R. 64-65)

Mr. Lyman Porter, Assistant District Superintendent of the Harvey District of The Texas Company at the time of the accident, testified that the Lake Salvadore field was in his district. He did not have immediate contact with the decedent but, as a matter of Company policy, he testified, as follows:

"Q. Did your roustabouts on that lease operate boats?"
"A. No."
"Q. Were they employed to operate boats?"
"A. No, sir."
"Q. And did Mr. Guidry, the decedent, operate a boat for The Texas Company?"
"A. Not to my knowledge, no, he was not supposed to operate a boat." (R. 83).

He reiterated:

"Q. Now, you had no intention of implying that Mr. Guidry was a crew member on this boat, did you?"
"A. Oh, no, Mr. Guidry was not a crew man on the boat." (R. 95).

He added, on re-direct examination:

"A. He wasn't hired to be a crew man." (R. 96).

In this connection, we submit that the analysis of work, taken from Guidry's own records and annexed in the Appendix hereto, definitely shows what Mr. Guidry was hired

to do and what he did do for The Texas Company. He was an oil field worker strictly, and not a boat crewman.

Paul Badeaux testified that he worked one day with decedent (R. 114). In answer to the question:

"Q. And did you operate the boat?"
"A. No, sir." (R. 115).

He continued, as follows:

"Q. *Did the decedent, Guidry, operate the boat, and by that I mean the man that was killed?*"
"A. *That was killed?* No."
"Q. Who operated it?"
"A. It was his brother."
"Q. Who started the engine on the boat?"
"A. The Mr. Guidry, the one that run the boat."
"Q. That is not the man that was killed, but the other Mr. Guidry?"
"A. No, the other man."
"Q. *Who steered or piloted the boat?*"
"A. *Him. The one that run the boat do everything — he run the motor and he steered the boat.*"
"Q. Now, what did you and Horace do when you went from one location to the other on the boat?"
"A. We scraped paraffin."
"Q *When you were on the boat going from one well to the other, what did you do?*"
"A. *When we were on the boat from one well to the other, we just sat down until we got to the well.*"
"Q. *You just sat down in the boat?*"
"A. *That is right.*" (R. 115-116).

He stated, further, that Horace would merely tell Henry where to go and that Henry took them to the indicated locations. He concluded by reaffirming that he was not employed by The Texas Company to handle lines on the boat. (R. 119).

## SUMMARY OF ARGUMENT

1. This petition for Writ of Certiorari should be denied because the decision of the Court of Appeals is not in conflict with any other decision or principle of law.

A reading of that opinion will disclose that in rendering the instant decision the Court of Appeals simply considered whether or not the plaintiff had presented sufficient evidence to sustain the jury's verdict that Guidry was "a member of the crew of a vessel." It accepted without question the rule of prior decisions, including, *The Texas Company* v. *Gianfala, Wife of Martin*, 222 F. 2d 382, 350 U. S. 897, 76 S. Ct. 141; *South Chicago Coal & Dock Company* v. *Bassett*, 309 U. S. 251, 60 S. Ct. 544; and *Senko* v. *LaCrosse Dredging Corporation*, (1957) 177 S. Ct. 415.

The Court not only accepted the opinions set out in the said cases, but in its application thereof properly followed the precedent set out by those and other cases as will be demonstrated more fully below.

2. No important question of Federal law is involved in this case. As a reading of the opinion of the Court of Appeals will disclose, no question of law was involved. The only question presented to the Court of Appeals was whether or not the evidence, if taken as true, constituted evi-

dence from which a reasonable man could find that decedent was "a member of a crew of a vessel" as that phrase has been defined heretofore by decisions of this and other Federal Courts.

In considering that question, the Court of Appeals reviewed the pertinent decisions and, accepting all of their principles as established, concluded that under the tests laid down in those decisions, this plaintiff had failed to present sufficient evidence that decedent was a member of the crew of any vessel and that decedent was in the service of said vessel at the time of his death.

3. The decision of the Court of Appeals was clearly correct. The plaintiff's own uncontested evidence established that at the time of the accident Guidry was working on a *permanent platform* built on piles driven into the bottom of Lake Salvadore. The work that he was performing was the work of a roustabout in testing the gas pipe line. This work had nothing whatever to do with navigation and commerce, and was totally unrelated to the work done by a member of a crew of a vessel.

## ARGUMENT

The instant case presents only the said question as to the sufficiency of the evidence to support the jury's findings that decedent was a member of the crew of a vessel. There is no conflict between this and other decisions or principles, and no important question of Federal law is involved herein.

The vast discretionary powers of this Honorable Court are given to it to be exercised with reference to Writs of Certiorari only where there are special and important reasons therefor, as for example, when a Lower Court has decided a case in a manner not in accord with the applicable decisions of the Supreme Court, or where the Court of Appeals has rendered a decision in conflict with the decision of another Court of Appeals on the same matter.

Such is not the case here.

Further, no additional action is needed by this Court in cases of this kind for guidance of the Bar.

The principles under which this case has been decided are well established.

In *South Chicago Coal & Dock Company* v. *Bassett,* (1940), supra, this Honorable Court held that whether or not a petitioner was a member of a crew was not a question of law, but a question of fact, and the record of that case disclosed that "There was enough (evidence) to sustain the Deputy Commissioner's ruling."

In *The Texas Company* v. *Gianfala, Wife of Martin,* (1955), supra, this Court reiterated its said prior holding by its per curiam under the authority of the Bassett case; *Summerlin* v. *Massman Construction Co.*, 195 F. 2d 715; *Wilkes* v. *Mississippi River Sand & Gravel Co.*, 202 F. 2d 383; *Gahagan Construction Corporation* v. *Armao,* 165 F. 2d 305.

The rule of law is established beyond any possibility of contest; that is, that the question of whether or not a man is a seaman and a member of the crew of a vessel, is a question of fact for the jury, and not a matter of law.

In the instant case the Court of Appeals heard the case under that rule of law and stated: *"The decisive point on this appeal is whether there was substantial evidence to support the jury's finding that decedent was a member of the crew of the Mary Virginia, which is a question of fact."*

Thereafter, in its opinion, the Court recognized the principle that *"If reasonable minds may fairly draw conflicting inferences from the same evidence, requiring different verdicts, the issue is for the jury to determine the correct inference."*

Having annunciated the said principle, which conforms to the law as set out by this Honorable Court, the Court held that there is no evidence to support the jury's finding that Guidry was a member of the crew.

Further, the decision in the instant case is not in conflict with *Senko* v. *LaCrosse Dredging Corporation*, (1957), supra, wherein this Honorable Court held that there was testimony tending to show that Senko was employed almost solely on dredge in question, that his duties were primarily to maintain the dredge during its anchorage for its future trips, that he would have a significant navigational function when the dredge was put in transit, and that there was sufficient evidence to support the jury's finding that he was a member of the dredge's crew and entitled to the benefits of the Jones Act.

The Senko case recognized the principle that a jury's decision is final, if it has a reasonable basis, whether or not the Appellate Court agrees with the jury's estimate.

On rehearing the Court of Appeals stated unequivocally in the instant case that the legal principles announced in Senko was the law applied in the instant case. The Court held:

> "After a careful consideration of the petition for rehearing, including said Senko opinion, *we think that the petition should be denied, because the applicable legal principle announced in Senko v. LaCrosse Corporation was the law which we announced and applied in the instant case.* The factual distinction between the two cases is that in the one before us there was no evidence reasonably tending to show that the decedent was a member of the crew; whereas in the one cited there was sufficient evidence to support the finding, the Supreme Court holding that there was sufficient evidence in the record for the jury to decide that the petitioner was permanently attached to and employed by the dredge as a member of its crew. No question was raised as to whether the dredge involved had the status of a vessel at the time of the injury.
>
> "The essence of the decision in the Senko case was that the determination of whether an injured person was a member of the crew was to be left to the finder of fact, which means that juries have the same discretion in determining whether an

injured person was a member of a crew as they have in finding negligence or any other fact. The essence of this discretion is that a reasonable basis to support it, whether or not the appellate court agrees with the jury's estimate." (Italics supplied).

The Court concluded on rehearing:

"In the federal court a jury's finding of fact must have substantial evidence to support it; a scintilla of evidence is not sufficient. There was substantial evidence to support the finding in Senko v. LaCrosse Dredging Corporation, because there was testimony introduced by petitioner tending to show that he was employed almost solely on the dredge, that his duty was primarily to maintain the dredge during its anchorage and for its future trips, and that he would have a significant navigational function, when the dredge was put in transit. For this reason, the decision below was reversed, and the case was remanded for judgment on two issues which the appellate court did not reach in its disposition of the case.

"The petition for rehearing is DENIED."

We respectfully submit that the Supreme Court has laid down the foundation for the trial of cases such as the instant case, and respondent is fully mindful of the fact that a jury must decide whether or not a man is a member of the crew of a vessel.

However, the Supreme Court, we submit, did not intend to do away with Federal procedures and to write out of our procedural law the directed verdict and other devices for the protection of defendants when juries may fall into error.

Since the decision in the Martin case the policy of the District Judges appears to be to submit all Jones Act cases to the jury and to be very leery of making use of its Court's prerogative to grant directed verdicts.

Courts are not infallible, Deputy Commissioners, who are experienced in finding facts relative to claims under the Longshoremen's Act, are not infallible, and juries, certainly, are not infallible.

For the sake of illustration, if a jury finds that black is white or that two plus two equal seven, that jury is obviously in error, and the error must be corrected by higher authority in the interest of justice.

The Supreme Court has recognized that factor, and in its per curiam in the Martin case, the Court cited *Wilkes* v. *Mississippi River Sand & Gravel Company*, supra, in which the Court denied certiorari. That case held:

> "In short, a Commissioner's conclusion that one is or is not 'a master or member of a crew' is not binding upon a reviewing court if the basic facts competently found by the Commissioner rightly call for a different conclusion. In Schantz v. American Dredging Co., 3 Cir., 138 F. 2d 534, 536, after quoting from Warner Co. v. Norton, supra, Judge

> Goodrich said: 'The same rule will apply to findings of judge or jury when plaintiff's effort is to escape the Longshoremen's Act, rather than to get under it, and the litigation is a law suit instead of an application for compensation.' "

Further, in *Zientek* v. *Reading*, (1955), 220 F. 2d 183, certiorari denied October 10, 1955, 350 U. S. 846, 76 S. Ct. 55, petition for rehearing denied January 30, 1956, 350 U. S. 960, 76 S. Ct. 345, the Supreme Court refused to disturb the holding of the Third Circuit, which had reversed the findings of the jury and the judgment of the Lower Court to the effect that Zientek was a member of a crew of a vessel and entitled as such to Jones Act recovery, for there was no evidence upon which a jury could have found properly that Zientek was a crew member.

The Zientek case was finally decided on the same day as the Martin case.

Therefore we submit that the Circuit Courts must be this Honorable Court's "instruments" for reviewing the fact findings of juries, and must reverse the said findings when they are in error.

We submit that when the Circuit Courts make a determination under correct principles of law, the decisions of the said Courts should be allowed to become final.

Still further, assuming for the purpose of argument that decedent was a member of the crew of the Mary Virginia, The Texas Company vigorously contends that his personal representatives are not entitled to the Jones Act relief,

because at the time of his death decedent was not acting in the service of the vessel, and that there is no evidence to support the jury's finding that the decedent's work, which consisted of handling a valve on a natural gas pipe line located on the said platform, was being performed for the purpose of keeping the vessel in navigation. Respondent does not argue with the principle of law "that a seaman has been defined broadly as a person whose occupation is to assist in the management of vessels at sea." Respondent recognizes that pursers, surgeons, firemen, chamber maids and other employees aboard ship, used in the furtherance of the main object of the enterprise in which the vessel is engaged, have been found to be seamen and members of the crew, because under certain factual circumstances, such persons are actually performing services which aid in keeping their vessels in navigation and commerce.

But respondent urges that by no stretch of the imagination could roustabout work performed on the instant platforms be connected with the water-taxi service of the Mary Virginia. Certainly Mr. Guidry was not aboard the vessel to further paraffin scraping or to further any of his other duties. He was aboard the vessel merely as a means of transportation.

The law on the subject is clear to the effect that to qualify as a member of a crew, a seaman must have been aboard a vessel primarily to aid in its navigation, and the test of whether or not such seaman is entitled to recovery under the Jones Act while working off the vessel and on a fixed permanent platform is: was he in the service of the vessel at the time of his accident?

While it may be true that a man aboard a dredge, for example, whose sole duties are to see that shells are brought up from the bottom and are distributed over the cargo bins properly and that the Government, who is purchasing the shells, is getting full measure, is a member of the crew of said dredge, because he is aboard to assist in carrying out the vessel's over-all purpose, respondent sees no connection between such decision and the facts in the instant case.

A dredge has specialized equipment for dredging shells, and its operators must employ the types of men needed to service such vessels. Such is not the case here.

Further, a wine steward aboard the steamship "United States," for example, is aboard that ship to care for the needs of its passengers, and he is an integral part of the service rendered to the passengers. Without doubt, he is a member of the crew of that vessel for he is furthering its purpose.

If the man who measures shells on a dredge and cares for their stowage, in the first example, or the wine steward, in the second example, is injured on shore in the service of his ship and in furtherance of the ship's interests to keep it in navigation and commerce, he, as a member of the crew, would be entitled to Jones Act protection under the holding of *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, (1943), 318 U. S. 36, 42-43, 63 S. Ct. 488, 492:

> "The right of recovery in the Jones Act is given to seamen as such and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service

and its relationship to the operation of the vessel plying in navigable waters."

In that case, a seaman was injured while ashore on the dock adjoining his moored ship, while he was assisting in the repair of a gasket on a device used in discharging a cargo of grain. His representatives were permitted to recover because he was working on said equipment which was used by the ship in transporting cargo and in the handling of the cargo. That was the basic purpose for which the ship was in navigation.

Respondent fully agrees with that decision and recognizes its theory that Jones Act recovery is not limited to accidents occurring on navigable waters. It is definite, now, that recovery does not hinge on situs, but on the nature of the service being rendered by the members of the crew and its relationship to the operation of the vessel.

The O'Donnell case, however, has no application herein. The Mary Virginia was a common, ordinary lugger. It had no special equipment. The only reason for its charter by The Texas Company was for transportation of its employees from one well platform to another.

When Guidry stepped off the Mary Virginia and on the permanent well platform, there was absolutely nothing for him to do and no service for him to perform to keep the Mary Virginia in operation on navigable waters. When he went upon the platform, his sole function was to do the work of an oil field roustabout, to check the valves on the oil well, to scrape paraffin, and to check the valve on the natural gas pipe line.

Whether or not there was pressure on the natural gas pipe line, whether or not there was paraffin in the well hole, and whether or not the chokes needed changing had no connection with the navigation of any vessel and had no bearing on the maintenance or preservation of the hull, machinery and tackle of any vessel.

The instant lugger was merely a water-taxi to transport employees.

With reference to the determination of whether or not a seaman on land is in the service of his vessel, suppose, for example, in the Lake District of Canada where there are hundreds of small islands, that a minister of the gospel makes use of the services of a chartered boat to carry him from island to island to preach the gospel. On a certain day, he requests the boat operator to bring him to a named island. Upon arrival, he steps off the boat and ties the line, which the boat operator throws to him, to the dock. He goes to a mission church, and while in the pulpit in the act of preaching to his congregation, the pulpit collapses and he is injured. Could it be said that a minister of the gospel is a seaman and a member of the crew because he tied up the line of the vessel "once in a while"? Could the vessel that brought him to the island be called a gospel preaching vessel? Could it be said that the minister was in the service of the vessel because he was preaching the gospel at the time of his injury, which activity was in furtherance of the vessel's over-all purpose?

Certainly the occasional handling of a line, even if such activity was proved in the instant case, would not be sufficient evidence upon which to determine that a man is

a seaman and member of the crew, for in the Bassett case, supra, this Honorable Court held: "These duties, as the Court of Appeals said, did not pertain to navigation, aside from the incidental tasks of throwing a ship's rope or making the boat fast, and service of the sort which could be readily performed or aided by a harbor worker."

Respondent respectfully submits that the minister in the example above was not a member of the crew under the Jones Act and that he was not in the service of the vessel at the time of his accident.

Respondent submits, further, that Guidry was a passenger on the Mary Virginia, not a member of its crew, and he was not in the service of the vessel at the time he met his unfortunate death within the meaning of the O'Donnell case.

The decision of the Court of Appeal was clearly correct in holding that Guidry was employed to work on the platforms, not on the vessel, and that there is no substantial evidence to support the jury's findings that he was a member of the crew.

The Court was equally correct in holding that Guidry was merely a passenger on the Mary Virginia.

Congress has passed special laws to cover employees in Guidry's status in the Outer Continental Shelf area and has protected them in enclosed areas, such as in the instant case, by the provisions of the Longshoremen's and Harbor Workers' Compensation Act. Decedent's rights under the latter Act and under the State laws have been specially reserved

to his representatives, who should seek their remedy under said laws and not under the Jones Act.

Finally, the District Court in its discretion required petitioner to remit $40,000.00 which petitioner has done.

Petitioner attempts to avoid her act, and to raise issues of quantum here. The District Judge gave the claimant the benefit of every doubt in reaching the decision on quantum (R. 229 et seq.). We respectfully submit that such a question has no place here. Further, petitioner is in error in representing to this Court that decedent earned $920.01 in 1953 up to his death, for as petitioner well knows, that amount included certain death benefits that The Texas Company paid under its employer-employee agreements. The Court based its decision on this issue on the stipulated fact that Mrs. Savoie had left her husband (decedent, Guidry), and is not entitled to recovery, and on the fact that Guidry had earned $4,700.00 during the full calendar year next preceding his death. Said decision is within the Court's sound discretion and should not be reviewed in any event.

## CONCLUSION

The petition for Writ of Certiorari should be dismissed for these reasons:

1. The decision of the Court below involves no conflict with any other decision or principle, but is in complete harmony with the law in cases upon the subject of the meaning of the phrase "member of the crew of a vessel."

2. No important question of Federal law is involved in this case. This case is concerned only with whether or not the evidence when judged in the light of the principles and precedents laid down by earlier decisions of this and other Federal Courts, is sufficient to enable reasonable men to differ upon whether or not Guidry was a member of the crew of a vessel and whether or not he was in the service of said vessel at the time of his death.

3. The Court below was correct in holding that where the evidence clearly established that Guidry was not a member of the crew of a vessel and not in the service of the vessel at the time of his death, he could not recover under the Jones Act.

Respectfully submitted,

Ernest A. Carrere, Jr.
Attorney for
The Texas Company

John May
D. Douglas Howard
May & Carrere
New Orleans, Louisiana
Of Counsel

## CERTIFICATE

I, the undersigned attorney of the Bar of the Supreme Court of the United States, certify that the above and foregoing brief in opposition to petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was served upon the attorneys for petitioner for Certiorari herein on July 15, 1957, by depositing same in the United States mail, at New Orleans, Louisiana, with first-class postage prepaid, addressed to counsel of record at their post office address as follows: Mr. James J. Coleman, National Bank of Commerce Building, New Orleans 12, Louisiana; Mr. Jack W. Thomson, Jr., National Bank of Commerce Building, New Orleans 12, Louisiana; Mr. Louis Dutrey, National Bank of Commerce Building, New Orleans, Louisiana, and Mr. Elwood R. Clay, National Bank of Commerce Building, New Orleans. Louisiana.

New Orleans, Louisiana

July 15, 1957

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Ernest A. Carrere, Jr.

## APPENDIX I

## ANALYSIS OF EXHIBIT DEFENDANT B

## ANALYSIS OF WORK PERFORMED BY HORACE GUIDRY FROM NOVEMBER 1, 1952 TO JANUARY 31, 1953

| Date | Work Performed |
|---|---|
| | Hr. changing charts on Wells No. 3 - 18 -8 - 21 |
| 11/1/52 | 7 Hrs. scraping paraffin, **checking chokes and pressure** on Wells No. 13 - 24 - 26 - 28 - 30; 1 Hr. changing chokes and checking **Well No. 20** |
| 11/4/52 | 8 Hrs. Scraping paraffin, **checking chokes and press.** on Wells No. 13 - 21 - 30 |
| 11/5/52 | 5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 8 - 27 - 29; 2 Hours dropping bontal sticks in wells No. 8 - 15 - 19 - 23; 1 Hr. switching at substations A & D & checking pressure on **Well No. 20** |
| 11/6/52 | 6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 7 - 8 - 9 - 12; 1 Hr. changing chokes on Wells No. 5 - 14 - 25 - 29 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 11/7/52 | 8 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 6 - 10 - 14 - 16 - 17 |
| 11/8/52 | 7 Hrs. Rigging up & swabbing Well No. 26; 1 Hr. **checking Wells** No. 18 - **20** - 32 - 8 |

| Date | Work Performed |
|---|---|
| 11/11/52 | 7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 13 - 21 - 30; 1 Hr. taking seat out of regulator valve on Well No. 3 |
| 11/12/52 | 6 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 5 - 7 - 9 - 17; 2 Hrs. placing seat in regulator valve, adjusting regulators & checking Well No. 3 |
| 11/13/52 | 6 Hrs. rigging up & swabbing Well No. 26; 1 Hr. working on Well No. 15 gas line; 1 Hr. changing charts on Wells No. 8 - 18 - 21 - 3 |
| 11/14/52 | 8 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 6 - 10 - 12 - 14 - 16 - 28 |
| 11/15/52 | 8 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 22 - 24 - 27 - 29 - 30 - 3 |
| 11/18/52 | 1½ Hrs. Regulating Purger on No. 3; 1½ Hrs. changing charts in field; 3 Hrs. taking samples & Press; 2 Hrs. Scraping No. 8 |
| 11/19/52 | 6 Hrs. taking gas readings on Wells No. 1 - 4 - 15 - 19 - 21; 1 Hr. changing recorder & choke on Well No. 3; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 11/20/52 | 5 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 2 - 4 - 5 - 17; 2 Hrs. changing chokes & checking pressure on Wells |

| Date | Work Performed |
|---|---|
| | No. 3 - 8 - **20** - 26; 1 Hr. taking gas reading on Well No. 18 |
| 11/21/52 | 4 Hrs. scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 29 - 30; 1½ Hr. **changing chokes & checking pressure** on Wells No. 8 - **20** - 26; 1½ Hr. changing batteries & repairing lights on Well No. 32 location No. 33; 1 Hr. changing charts on No. 8 - 3 - 18 - 21 |
| 11/22/52 | 4 Hrs. repairing flow line & gas line on Well No. 18; 3 Hrs. Scraping paraffin, **checking chokes & pressure on Wells** No. 16 - 22 - 27; 1 Hr. changing charts on Wells No. 3 - 18 - 8 - 21 |
| 11/25/52 | 8 Hrs. Scraping paraffin & changing charts |
| 11/26/52 | 3 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 16; 2 Hrs. dropping bontal sticks, **changing choke** & working on No. 23 valve; 1 Hr. changing charts on No. 3 - 8 - 18 - 21; 1 Hr. changing wire guide & working on lubricator; 1 Hr. checking press. on Wells No. 8 - **20** - 26 |
| 11/27/52 | 5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 3 - 7 - 9 - 12; 1 Hr. working on No. 15 gas line; 1 Hr. **changing choke** on Well No. 8 & checking wells No. **20** & 26; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |

| Date | Work Performed |
|---|---|
| 11/28/52 | 7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 6 - 10 - 14 - 17 - 29; 1 Hr. changing charts on Wells No. 8 - 3 - 18 - 21 |
| 11/29/52 | 7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 13 - 22 - 24 - 27 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/2/52 | 6 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 17 - 13 - 27; 2 Hrs. changing choke on Well No. 19 & checking pressures on Wells No. 8 - 15 - 20 - 21 |
| 12/3/52 | 5 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 14 - 22 - 30; 2 Hrs. taking gas readings on Wells No. 8 & 15; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/4/52 | 7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 3 - 5 - 7 - 9 - 12; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/5/52 | 5½ Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 6 - 10 - 16 - 29; 2½ Hrs. taking gas reading on Well No. 26 & changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/6/52 | 5 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 2 - 4 - 21 - 24; 1 Hr. switching at substations A & D; 1 Hr. changing |

| Date | Work Performed |
|---|---|
| | chart on Wells No. 3 - 8 - 18 - 21; 1 Hr. taking samples & checking Wells No. 26b & 8 |
| 12/9/52 | 6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 14 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21; 1 Hr. switching at substation |
| 12/10/52 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 3 - 7 - 9 - 12; 1 Hr. **checking pressures on Wells No. 8 - 20** - 21 |
| 12/11/52 | 6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 26 - 16 - 17 - 13; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21; 1 Hr. switching wells at substations |
| 12/12/52 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 4 - 5 - 10 - **20** - 22; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/13/52 | 5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 24 - 27 - 29; 2 Hrs. dropping bontal sticks in Wells No. 8 - 15 - 19 - 23; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/16/52 | 4 Hrs. **checking chokes & pressure**; 2 Hrs. taking gas readings on Well No. 26; 1 Hr. changing batteries on light at location No. 33; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |

| Date | Work Performed |
|---|---|
| 12/17/52 | 7 Hrs. taking gas readings on Wells No. 4 - [illegible] - 15 - 18 - 19 - 21; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/18/52 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 7 - 9 - 12 - 14 - 22; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/19/52 | 6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 17 - 27 - 30; 1 Hr. **changing chokes** on Well No. 8 - 21 and checking light at No. 33 location; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/20/52 | 4 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 6 - 16 - 29; 3 Hrs. **changing chokes & checking pressure & chokes on wells;** 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/23/52 | 7 Hrs. Scraping paraffin, **checking choke & pressure** on Wells No. 7 - 9 - 12; 1 Hr. changing charts on Well No. 3 - 8 - 18 - 21 |
| 12/24/52 | 8 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 3 - 4 - 5 - 6 - 10 - 14 |
| 12/26/52 | 4 Hrs. working on Orifice meter & salt water system; 3 Hrs. working on 32 & 18 & **checking pressures on wells;** 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |

| Date | Work Performed |
|---|---|
| 12/27/52 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells 13 - 16 - 17 - 27 - 29; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/30/52 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 10 - 21 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 12/31/52 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 3 - 7 - 9 - 12 - 14; 1 Hr. changing charts on Wells No. 3 - 8 - 18 21 |
| 1/1/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 6 - 16 - 17 - 22 - 27; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/2/53 | 6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 5 - 20 - 24; 2 Hrs. working at Lease |
| 1/3/53 | 8 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells 13 - 19 - 26 - 29 - 30 |
| 1/6/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 7 - 9; 1 Hr. working on lubricator |
| 1/7/53 | 5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 12 - 14 - 17; 2 Hrs. taking gas readings on Well No. 8; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |

| Date | Work Performed |
|---|---|
| 1/8/53 | 4 Hrs. Scraping paraffin, **checking chokes & pressure on** Wells No. 3 - 6 - 27; 2 Hrs. taking gas readings on Wells No. 4 - 15; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21; 1 Hr. checking Wells No. __ - 23 & taking sample on No. 4 |
| 1/9/53 | 8 Hrs. connection work & cleaning up on Lease |
| 1/10/53 | 4 Hrs. making connections & painting at Lease; 3 hrs. **checking chokes & pressure &** switching at substation; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/13/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 5 - 30; 1 Hr. changing chart on Wells No. 3 - 8 - 18 - 21 |
| 1/14/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 7 - 9 - 12 - 14 - 20; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/15/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 4 - 6 - 10 - 16 - 17; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/16/53 | 8 Hrs. Scraping paraffin & working on Well No. 18 |
| 1/17/53 | 5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 22 - 24 - 27 - 29; 2 Hrs. |

| Date | Work Performed |
|---|---|
| | **changing chokes** & 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/20/53 | 5 Hrs. Scraping paraffin & working on Well No. 18; 2 Hrs. changing & **checking chokes in wells;** 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/21/53 | 6 Hrs. Scraping paraffin & working on Well No. 18; 2 Hrs. **checking wells, changing chokes** & switching at substation |
| 1/22/53 | 5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 7 - 9 - 12; 3 Hrs. **changing chokes** & checking Wells No. 8 - 4 - 19 - 23 |
| 1/23/53 | 5 Hrs. cleaning & painting at Lease; **3 Hrs. making connections** |
| 1/24/53 | 8 Hrs. cleaning & painting at Lease |
| 1/27/53 | 6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 17; 1 Hr. working on Well No. 26; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/28/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 6 - 16 - 27 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |

| Date | Work Performed |
|---|---|
| 1/29/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 10 - 14 - 22 - 29; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |
| 1/30/53 | 7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 3 - 7 - 9 - 12; 1 Hr. changing charts on Well No. 3 - 8 - 18 - 21 |
| 1/31/53 | 7 Hrs. taking gas readings on Wells No. 1 - 18 - 19 - 21 - 26; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21 |

## APPENDIX II

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16188

THE TEXAS COMPANY,
Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the estate of HORACE P. GUIDRY,
Appellee.

Appeal from the United States District Court for the
Eastern District of Louisiana

(February 5, 1957)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: The appellee, as administratrix of the estate of her deceased husband, brought this suit against the appellant, the decedent's employer, for recovery of damages, under the Jones Act, for the death of her husband, predicating liability upon negligence, while decedent was acting as a member of the crew of the Mary Virginia,

a vessel operated and controlled by appellant on Lake Salvadore.

The plaintiff alleged that on February the 4th, 1953, at Well No. 20 in Lake Salvadore, the deceased was in the process of opening a valve, which exploded and blew him off the well platform into the water and caused his death. Several grounds of negligence were alleged, among which were that the valve was defective, which fact should have been known to the Texas Company; that the company failed to furnish a sufficient number of competent employees; and failed to furnish a safe place for the decedent to work. In the alternative, plaintiff sought to recover under the Longshoremen's & Harborworkers' Act, and under the Louisiana Workmen's Compensation Law. These alternatives were reserved by agreement, and are not before the Court at this time. The trial below resulted in a verdict and judgment for the plaintiff.

The decisive point on this appeal is whether there was substantial evidence to support the jury's finding that decedent was a member of the crew of the Mary Virginia, which is a question of fact. In denying the motions below, the Court said that if it were "writing on a new slate before Martin," it might have some misgivings as to this finding. The Court was referring to *Texas Company* v. *Gianfala*, 222 F. (2) 382, 350 U. S. 879, 76 S. Ct. 141; rehearing denies January 30, 1956, 76 S. Ct. 346. The appellant's contention is that, at the time of his death, the decedent was not in the service of the vessel Mary Virginia, and that there is no substantial evidence to support the jury's findings on this point.

We agree with appellant that the Supreme Court in the Martin case did not intend to do away with the established federal procedure, whereby in a civil action at law the judge may direct a verdict if there is no issue of fact to be submitted to the jury on a decisive issue; provided, of course, even where there is no conflict in the evidence, if reasonable minds may fairly draw conflicting inferences from the same evidence, requiring different verdicts, the issue is for the jury to determine the correct inference.

From the undisputed facts in this case, the decedent was employed as a roustabout by appellant. He was employed to work on the platforms, not on the vessel. There is no substantial evidence to support the jury's finding that he was a member of the crew. He was an oil-field worker strictly, and not a boat crewman. His duties did not pertain to navigation, not even the casual task of throwing a rope or making the boat fast, a service that readily could be performed by a harbor worker. He had no such duties to perform. He was merely a passenger on the Mary Virginia, and he was not on the boat when he met his death.

The judgment appealed from is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

REVERSED.

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A True Copy:
Teste:

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Clerk of the United States Court
of Appeals for the Fifth Circuit.

## APPENDIX III

ON PETITION FOR A REHEARING

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 16188

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THE TEXAS COMPANY,
Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the estate of HORACE P. GUIDRY,
Appellee.

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Appeal from the United States District Court for the Eastern District of Louisiana

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(April 9, 1957.)

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Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: The motion of appellee for leave to file twenty photostatic copies of the decision of the Supreme Court in *Senko v. LaCrosse Dredging Corporation*, No. 62, Oct. Term, 1956, should be overruled, because

all of the judges of this court already have printed copies of said opinion, and to file twenty photostatic copies of the same would unnecessarily encumber the records in the clerk's office.

After a careful consideration of the petition for rehearing, including said Senko opinion, we think that the petition should be denied, because the applicable legal principle announced in Senko v. LaCrosse Corporation was the law which we announced and applied in the instant case. The factual distinction between the two cases is that in the one before us there was no evidence reasonably tending to show that the decedent was a member of the crew; whereas in the one cited there was sufficient evidence to support the finding, the Supreme Court holding that there was sufficient evidence in the record for the jury to decide that the petitioner was permanently attached to and employed by the dredge as a member of its crew. No question was raised as to whether the dredge involved had the status of a vessel at the time of the injury.

The essence of the decision in the Senko case was that the determination of whether an injured person was a member of the crew was to be left to the finder of fact, which means that juries have the same discretion in determining whether an injured person was a member of a crew as they have in finding negligence or any other fact. The essence of this discretion is that a jury's decision is final if it has a reasonable basis to support it, whether or not the appellate court agrees with the jury's estimate.

In the federal court a jury's finding of fact must have substantial evidence to support it; a scintilla of evidence is

not sufficient. There was substantial evidence to sup[port] the finding in Senko v. LaCrosse Dredging Corporat[ion] because there was testimony introduced by petitioner t[end]ing to show that he was employed almost solely on dredge, that his duty was primarily to maintain t[he] during its anchorage and for its future trips, and th[at] would have a significant navigational function, w[hen] dredge was put in transit. For this reason, the [order] below was reversed, and the case was remanded f[or] ment on two issues which the appellate court did n[ot] in its disposition of the case.

The petition for rehearing is DENIED.